

REMARKS

The Advisory Action of October 25, 2005, withdraws the rejections under 35 USC 112 on the basis of the amendments of October 21, 2005, which are repeated above in the absence of entry by appeal.

The Advisory Action of October 25, 2005, admits that claiming a foamed plastic layer that "itself" adheres to a base and innermost layers clarifies the scope of the claims, but still holds that it has not changed the interpretation of the rejection of August 2, 2005, that "... the foamed plastic has adhesive properties and does not require adhesive layers between itself and the base layer and/or the innermost layer." No attempt to change this interpretation is or has been intended or made. The interpretation in the Actions is correct.

The foamed plastic was before and is now itself a tying layer of adhesion plastic that itself adheres to and, thus, adhesively ties base and innermost layers together.

Nevertheless, now that the filing of an RCE permits rewording of the claims, each of independent claims is amended to include further emphasis of this previously claimed limitation. That such further emphasis is non-narrowing and, thus, non-invoking of Festo-like limitations is established by the interpretation of the rejection of August 2, 2005, set out above. This interpretation is maintained and only re-emphasized by the amendments above.

The continued rejections of independent claims 1, 15 and 22 under 35 USC 102 for anticipation by the cited Maimets patent are, therefore, again traversed.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior reference ... in as complete detail as contained in the ... claim. MPEP 2131 (citations omitted).

The disclosure of a gasket that includes grout in the Maimets patent does not meet this burden and, therefore, cannot support the rejection of the Action of August 2, 2005.

The Maimets patent discloses a porous gasket 19 that can be an open-celled plastic material such as cellulose sponge or polyethylene open-celled foam or other material that can absorb a significant quantity of grout. Column 15, lines 63-64, disclose that the primary purpose of the gasket is to carry the grout.

... the primary purpose of the gasket is that of a grout carrier medium.

Therefore, the grout cannot be the claimed adhesion tying layer because, if it were, it would not have to be carried in a porous gasket as disclosed. The grout is not a layer as claimed.

Moreover, the grout is not foamed plastic. Column 7, lines 11-14, of the Maimets patent disclose that the grout can be, for example, adhesive epoxy or other materials. Therefore, the grout may adhere adjacent layers together, but it is not foamed plastic as expressly claimed for the adhering tying layer claimed.

Instead, the foamed plastic of the Maimets patent is the gasket, as described above. But the foamed plastic gasket cannot be the expressly claimed adhesion tying layer, because if it were, there would be no need for the adhesive grout disclosed in the patent.

The Maimets patent discloses foamed plastic that is not adhesive and grout that is not foamed plastic. This does not disclose each and every element claimed in as complete detail as in the claim.

The elements claimed include a foamed plastic layer that itself adheres to and, thus, ties together other, base and innermost layers. The claimed invention is a layer, not grout in a porous gasket. The layer is foamed plastic that itself adheres to other layers, not foamed plastic that porously holds grout or grout that is adhesive but not foamed. Therefore, the

Maimets patent does not disclose every element claimed in as complete detail as claimed.

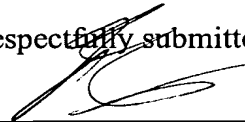
The rejection for anticipation that thus fails should not be converted into a rejection under 35 USC 103 for obviousness from the Maimets patent, because the patent does not teach toward the claimed invention, either. The foamed plastic that itself adheres to other layers ties the other, base and innermost layers together. It does not carry grout as a primary purpose or other purpose.

Moreover, the teaching of the Maimets patent that a foamed gasket must carry other, separate adhesive is contrary to the claimed invention that the foamed plastic itself is the adhesive.

**PRIOR ART MUST BE CONSIDERED IN ITS
ENTIRETY, INCLUDING DISCLOSURES THAT
TEACH AWAY FROM THE CLAIMS. MPEP 2141.02**

Reconsideration and allowance are, therefore, requested.

Respectfully submitted,



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